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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

*Ex parte RISHI NANGALIA,
JOHN MAHONEY and DEBRA L. RIBAUDO*

Appeal 2007-4402
Application 10/727,418
Technology Center 3600

Decided: April 8, 2008

Before WILLIAM F. PATE, III, TERRY J. OWENS, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants appeal from a rejection of claims 1-8, 19-26, 37, 38, 43 and 44, which are all of the pending claims.

THE INVENTION

The Appellants claim a method for trading on a securities exchange or an electronic communications network (ECN). Claims 1 and 7 are illustrative:

1. A method comprising:

determining during a trading session an attribute of a securities exchange or ECN, the determined attribute not being any one of: a quoted security price, an order size and an average response time; and

determining during the trading session, based at least in part on the determined attribute, at least one of: (a) whether to route an order to the securities exchange or ECN, and (b) a proportion of the order to allocate to the securities exchange or ECN.

7. A method comprising:

determining during a trading session at least one attribute of a securities exchange or ECN; and

determining during the trading session, based at least in part on the determined at least one attribute, at least one of: (a) whether to route an order to the securities exchange or ECN, and (b) a proportion of the order to allocate to the securities exchange or ECN;

the determined at least one attribute selected from the group consisting of: (a) a percentage of total market volume in the particular security handled during the trading session by the securities exchange or ECN; (b) a degree to which the securities exchange or ECN is overfilling orders for the particular security during the trading session; (c) an average amount of time that the securities exchange or ECN offered a best price for the particular security relative to other order destinations; (d) a percentage of the trading session during which the securities exchange or ECN offered a best price for the particular security relative to other order destinations; (e) a number of times during the trading session at which the securities exchange or ECN offered a best price for the particular security relative to other order destinations; and

(f) an average amount of time required during the trading session for the securities exchange or ECN to match a best price offered for the particular security by another order destination.

THE REFERENCES

Waelbroeck '672	US 2002/0010672 A1	Jan. 24, 2002
Waelbroeck '827	US 2002/0052827 A1	May 2, 2002

THE REJECTIONS

Claims 1-8, 19-26, 37, 38, 43 and 44 stand rejected under 35 U.S.C. § 103 over Waelbroeck '672 or Waelbroeck '827.^{1,2}

OPINION

We affirm the Examiner's rejections.

The Appellants argue only independent claim 1, which is as broad as any of the claims, and independent claim 7 (Br. 10-14; Reply Br. 2-3). We therefore limit our discussion to those claims. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007). Also, because Waelbroeck '827, which is a continuation-in-part of Waelbroeck '672, does not include any disclosure that is missing from Waelbroeck '672 and is either relied upon by the Examiner or the Appellants or appears relevant, we limit our discussion to Waelbroeck '672. That discussion applies also to Waelbroeck '827.

Claim 1

¹ In the Examiner's Answer the publication number of Waelbroeck '827 is erroneously stated as US 2004/0034591 A1 (Ans. 2).

Waelbroeck ‘672 discloses “a method for managing certified trading information to direct and execute confidential trading interests over a computer network such as the Internet” (¶ 0002). Waelbroeck ‘672 states that “[t]he term ‘trading interest’ is used herein to describe any expressed interest in trading a given security or securities, and the term ‘certified trading interest’ [CTI] is used herein to describe a trading interest that has been verified as genuine and certified as such by some trusted third party” (¶ 0003). Waelbroeck ‘672 teaches that “[t]rades often originate from buy-side traders and are routed by a broker to a marketplace or ECN where they either execute or get routed to another execution destination where a better price is available” (¶ 0098), and that the choice of destination can be based upon CTI information (¶ 0096).

The Appellants argue that the Waelbroeck ‘672 CTI information is an attribute of the market participant, not an attribute of a securities exchange or ECN (Reply Br. 2).

The Waelbroeck ‘672 “trading interest”, i.e., an expressed interest in trading a given security or securities (¶ 0003), is an attribute of the market participant.³ A “certified trading interest”, however, i.e., a trading interest that has been verified as genuine and certified as such by some trusted third party (¶ 0003), is an attribute of the securities exchange or ECN because it is

² Rejections under 35 U.S.C. §§ 101 and 112, first paragraph, are withdrawn in the Examiner’s Answer (Ans. 4).

³ Waelbroeck ‘672 defines “market participant” as “any person or firm with the ability to trade securities; examples of market participants include broker-dealers, buy-side firms, sell-side firms, and private investors trading on electronic communication networks (ECNs)” (¶ 0004).

the securities exchange or ECN, not the market participant, that sets the criteria for determining whether the market participant's trading interest is genuine.

The Appellants argue that Waelbroeck '672 is concerned with routing orders to potential counterparties rather than determining whether an order is to be routed or allocated to a particular exchange (Br. 11).

Waelbroeck '672 teaches that CTI information can be used in order routing, and that orders can be routed by a broker to a marketplace or an ECN where they either execute or get routed to another execution destination where a better price may be available (¶¶ 0096, 0098). Hence, Waelbroeck '672 is concerned with routing orders to the execution destination, which can be a securities exchange or an ECN, that offers the best price.

The Appellants argue that Waelbroeck '672 fails to indicate that the routing determination is based on an attribute of a securities exchange other than quoted price, order size or average response time (Br. 11).

Waelbroeck discloses that the identity of a user which leads to "valuable confidential trading interests of others" can be used as a CTI attribute (¶0025). Such criteria, other than quoted price and order size, would be useful in certifying that a market participant's trading interest is genuine to determine whether one should or should not trade with the market participant. Waelbroeck '672 would have led one of ordinary skill in the art, through no more than ordinary creativity, to select any of the other securities exchange or ECN criteria for determining whether to provide that certification, such as the identity of a user which indicates whether the

market participant's past trading history/interests are sufficiently aggressive for the securities exchange or ECN (Waelbroeck '672 ¶ 0003). *See KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007) (In making the obviousness determination one "can take account of the inferences and creative steps that a person of ordinary skill in the art would employ").

For the above reasons we are not persuaded of reversible error in the Examiner's rejection of claim 1.

Claim 7

The Appellants argue that Waelbroeck '672 does not disclose or suggest routing an order based upon one or more of the attributes in the group set forth in claim 7 (Br. 11-12).

One of those attributes is "(e) the number of times during the trading session at which the securities exchange or ECN offered a best price for the particular security relative to other order destinations". The Appellants state that the term "'trading session' includes one or both of (a) a calendar day, and (b) a period during a calendar day during which a market or ECN is open for trading" (Spec. 2:4-6). Hence, any period during a calendar day when a securities exchange or ECN is open and a price determination is made falls within the Appellants' term "trading session". Also, the number of times during the trading session at which a securities exchange or ECN offers the best price for a particular security relative to other order destinations can be one time. Therefore, when Waelbroeck '672 determines that either a securities exchange (marketplace) or an ECN offers the best price (¶ 0098), the decision to route the order to that securities exchange or ECN is based upon the number of times (one) that the securities exchange or

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ECN offered the best price for the particular security relative to other order destinations during that trading session.

We therefore are not convinced of reversible error in the rejection of claim 7.

DECISION

The rejections of claims 1-8, 19-26, 37, 38, 43 and 44 under 35 U.S.C. § 103 over Waelbroeck '672 and over Waelbroeck '827 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

vsh

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